



THE ATTORNEY GENERAL OF TEXAS

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May 12, 1969

Honorable William J. Burke
Executive Director
State Board of Control
Sam Houston State Office
Building
Capitol Station
P. O. Drawer GG
Austin, Texas 78711

Opinion No. M-392

Re: Is the Board of Control
required to make an award
based on a bid which is
low only because of a
cash discount, which the
Board finds cannot be
legally earned under the
terms of the bid proposed?

Dear Mr. Burke:

You have requested our opinion on the following
question, to wit:

"Is the Board of Control required to
make an award based on a bid that is low
only by virtue of a cash discount, when
it has been determined by the Board of
Control, on the basis of facts and in-
formation available to it, that the cash
discount may not be legally earned under
the terms of the bid proposal?"

The Board of Control put out bid invitations
on letterpress printing, as authorized by the State Pur-
chasing Act of 1957 (Article 664-3, V.C.S.). You state
that the Mouton Printing Company of Houston, Texas, sub-
mitted a bid containing a 5% cash discount. The Board
of Control found as a matter of fact that said cash dis-
count cannot be legally earned by the State under the bid
proposal. Since we have not been furnished all of the
facts, we are not in a position to pass upon any law ques-
tion, which might be posed therefrom, such as whether the
Board's decision amounted to an abuse of discretion.

The Board of Control has the authority to reject
all bids, or parts of bids, when the interest of the State
will be served thereby. Article XVI, Section 21, Constitu-
tion of Texas; Article 664-3, Section 8(e), V.C.S. In
determining the lowest, responsible and best bid the Board
is required to consider those factors set out in Section
8(f) of said Article 664-3. After considering the stat-
utory and constitutional requirements, the Board of Control

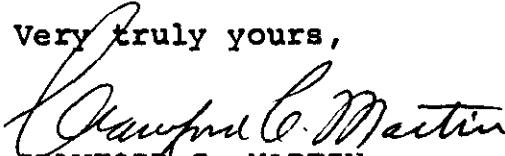
has the discretionary right to determine the lowest, responsible and best bid.

The Board of Control has determined that, under the facts, the State is unable to pay for the letterpress printing in time to earn the cash discount. Assuming that the cash discount cannot be legally earned, the Board shall award the contract to the bidder which it considers to have submitted the lowest, responsible and best bid without regard to the cash discount provision.

S U M M A R Y

In determining the lowest and best bid the Board of Control must consider the statutory requirements contained in Section 8(f) of Article 664-3, V.C.S. Where a cash discount is authorized in a bid proposal which the Board of Control determines, as a matter of fact, cannot be earned by the State, and assuming that the cash discount cannot be legally earned, the Board of Control shall award the contract to the bidder it finds to have submitted the lowest, responsible and best bid without regard to the cash discount.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Jack Sparks
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APPROVED:
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